IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Smt. Sumitra Devi vs. Ratan Lal through his Legal Representatives

S.B. Civil Second Appeal No.94/1984 against the judgment and decree dated 31.3.1984 passed by the Addl. District Judge No.1, Jodhpur in Civil Appeal Decree No.23/1982.

Date of Judgment: June 2, 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. G.R. Singhvi for the appellant.
Mr. R.R. Chacha & Mr. B.V. Thanvi for the respondent.

REPORTABLE

BY THE COURT:

This second appeal is against the judgment and decree passed by the first appellate court dated 31.3.1984, allowing the appeal of the tenant-defendant preferred against the decree for eviction dated 5.7.1982

Earlier landlord Badri Narayan(appellant no.1) filed one suit for eviction of his tenant Ratan Lal (deceased) which was registered as C.O. Suit No.832/73. The ground for eviction of the tenant was only default in payment of rent. The tenant was protected from his eviction otherwise than on the ground as provided under the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short “the Act of 1950”).

As per Section 13(1)(a) of the Act of 1950, in case of default in payment of rent for six months by the tenant, the landlord can institute the suit for eviction of the tenant but one opportunity is given to the tenant to avoid the eviction by making payment in the court as determined by the court under Section 13(3) read with sub-section(4) of the Act of 1950. During the pendency of the C.O. Suit No. 832/73, insertion of Section 13A in the Act of 1950 gave an opportunity to the tenant to deposit the entire arrears of rent along with interest at the rate of 6% per annum and the cost of the suit. By this offer by the tenant by moving appropriate application and on determination of the arrears of rent by the civil court, the tenant is required to deposit the determined rent under sub-section (b) of Section 13A of the Act of 1950. Sub-section (b) of Section 13A provides that in case the tenant pays the determined arrears of rent, interest and the cost within the stipulated period which shall not be exceeding 90 days, the eviction proceeding against the tenant ***shall*** be disposed of as if the tenant has not committed any default.

Suit No. 832/1973

It appears from the facts of the C.O. Suit No. 832/73 that before coming into force of Section 19A, the rent was determined by the civil court but the defendant failed to deposit the rent in time, therefore, his defence was struck off by the civil court by order dated 7.4.1974.

The appeal against the said order was also dismissed. But since the tenant got further opportunity because of the amendment and insertion of Section 19A in the Act of 1950, therefore, the defendant submitted application under Section 13A(a) of the Act of 1950 and prayed that he is ready to pay all arrears of rent, interest and cost of the suit. On this application, the trial court determined the rent under sub-section (b) of Section 13A by order dated 31.10.1975. The trial court determined the rent of Rs.2082.50 which was upto 31.10.1975 as arrears of rent, Rs.230.25 as interest and the cost of the suit of Rs.290/-. This order was amended by another order of the trial court dated 18.12.1975. By this, the interest was increased to Rs.290/- from Rs.230.25 and cost of the suit was decreased to Rs.244.50 in place of Rs.290/-. The trial court directed the defendant to pay Rs.2617/- by 23.12.1975. Said rent was deposited in the trial court on 20.12.1975. It will be worthwhile to mention here that the suit was not disposed of on 20.12.1975, the date on which the defendant deposited the rent nor it was disposed of on 23.12.1975, the date by which the defendant was permitted to deposit the rent under sub-section (b) of Section 13A of the Act of 1950. The suit continued and defendant's evidence was closed on 26.2.1976. The plaintiff closed his rebuttal evidence on 19.7.1976. It will be further relevant to mention here that before the trial court, the plaintiff himself submitted an application for striking off the defence of the

tenant on the ground that the tenant did not deposit the rent month by month obviously for the period after 31.10.1975 and till the suit was pending. Ultimately the trial court dismissed the suit No. 832/1973 of the plaintiff after recording finding that the rent deposited by the tenant (respondent) for the period beyond the period for which the rent was determined by the trial court is not valid payment of rent to the landlord and the tenant shall not be entitled to take benefit of said deposit of rent. However, the trial court still held that if plaintiff wishes, he may be free to withdraw the rent deposited by the tenant. Those observation and findings are one of core issue involved in this appeal arising out of subsequently filed suit no. 405/1976 by the landlord for eviction of the same tenant respondent on the ground of second default in payment of rent.

Present Suit No.405/1976

The landlord thereafter instituted this present second suit on the ground that the defendant did not pay the rent to the landlord from 1.11.1975 to 30.6.1976 and thereby the defendant had committed default in terms of sub-clause (a) of sub-section (1) of Section 13 of the Act of 1950. Solely on this ground of second default, the plaintiff filed the suit for eviction in which the defendant took several pleas but for the purpose of deciding this appeal, the only plea relevant is that the defendant deposited the rent in earlier C.O. Suit No.832/73 and the trial

court while dismissing the suit of eviction, allowed the plaintiff to deposit the rent in the suit No.832/1973 and the plaintiff was given option to withdraw the rent by the court in C.O. Suit No.832/1973, therefore, according to the defendant, no rent of more than six months was due in the tenant on the date of filing of the suit by the landlord.

It is not in dispute that if the rent deposited by the tenant in C.O. Suit No.832/73 is considered as valid payment or valid tender of the rent to the landlord then the tenant is not defaulter and no decree for his eviction can be passed. . But if it is held that in view of specific provision under Section 19A which provides procedure for deposit of rent by the tenant in certain contingencies, no other mode can be adopted for payment of rent to the landlord by the tenant, then the tenant since admittedly has not followed the procedure as provided under Section 19A and did not deposit the rent under the said provision, therefore, he becomes liable to be evicted on the ground of default in payment of rent.

The trial court in the present suit, by its judgment and decree dated 5.7.1982 declared the tenant-respondent defaulter in payment of rent after holding that the deposit of rent by the tenant in C.O. Suit No.832/73 for the period from 1.11.1975 onwards was not valid and legal deposit. However, the appellate court reversed the said finding by impugned judgment and decree dated 31.3.1984 and dismissed the suit

of the plaintiff after holding the deposit of rent in C.O. Suit No.832/73 for the period from 1.11.1973 as valid payment of rent to the landlord by the tenant. Hence this second appeal. The second appeal was admitted by this Court on 22.8.84 after framing the following substantial question of law:-

> *"Whether in the facts and circumstances of the case, the learned Additional District Judge No.1. Jodhpur, was not right in dismissing the suit on the ground that the defendant-tenant had deposited rent in Civil Original Suit No.832 of 1979 and so the suit cannot proceed on the basis of the second defaults which are said to have been committed by the defendant in payment of rent."*

The learned counsel for the appellant vehemently submitted that sub-section (b) of Section 13A very specifically provides that in case tenant wants to take benefit under Section 13A, he should apply to the court and pay landlord all arrears of rent, interest thereon and full cost of the suit. In case tenant applies then the court determines the arrears of rent under sub-section (b) of Section 13A and awards interest at the rate of 6% per annum and also determines the cost of the suit and directs the tenant to pay the amount so determined within such time, not exceeding 90 days which may be fixed by the Court. Sub-Section (b) of Section 13A also provides that on such payment being made within the time fixed by the court, the proceeding shall be disposed of as if

tenant had not committed any default. According to the learned counsel for the appellant, in view of the above unambiguous legal position, the tenant can deposit the rent as determined by the court and not for the period beyond the period for which the rent was determined by the court. The law also specifically provides that on payment of such determined rent, the proceeding (suit for eviction of tenant on the ground of default) shall stand disposed of. According to the learned counsel for the appellant, this Court in the case of Shyamlal and another vs. Upbhokta Sahakari Samiti, Jodhpur (AIR 1983 Raj.133) held that the ground of Section 13(1)(a) falls through the moment the tenant deposits the amount of rent and interest on the first day of hearing or within the time allowed by the court. The learned counsel for the appellant also relied upon another judgment of this Court delivered in the case of Siya Sadan v. Sagar Mal & ors. (1982 WLN 118) wherein this Court held that the ground of default disappears and becomes non-existent in the eye of law on account of payment of rent after its adjudication under Section 13A of the Act.

The learned counsel for the appellant heavily relied upon the judgment of the Hon'ble Apex Court delivered in the case of Atma Ram vs. Shakuntala Rani (2005(2) RCJ 10 (SC) 10), wherein according to the learned counsel for the appellant, the tenant deposited the rent under the provisions of the Punjab Relief of Indebtedness Act, because of the

reason that the arrears of rent fall within the definition of “Debt” and the debtor had legal right to discharge his liability (debt) by depositing the debt (including the arrears of rent) in court under the provisions of said Debt Relief Act. Even the said deposit which was in court in a litigation between the landlord and tenant themselves was not considered as valid payment under the provisions of the Rent Control Act and the tenant was held defaulter. Therefore, according to the learned counsel for the appellant, the amount which has not been deposited where it should have been and when it should have been deposited, then that payment of rent cannot be valid payment of rent. Once the payment is not valid and legal, the tenant cannot claim that he has tendered or paid the rent to the landlord and, therefore, he is not defaulter.

With the help of above authorities, the learned counsel for the appellant vehemently submitted that once the court determined the rent upto the period 31.10.1975 in earlier suit No.C.O.832/1973, then the tenant was entitled to and could have deposited the rent upto the period 31.10.1975 in C.O. Suit No.832/73 in view of the judgment of this Court delivered in the case of Siya Sadan's case (supra). The provisions of Sections 13(4),13(5) and 13(6) cannot apply in a case where the tenant avails the benefit under Section 13A.Therefore, no future rent could have been deposited by the tenant in C.O. Suit No.832/73,

either under Section 13A or under any provision of Section 13(4), (5) and (6) of the Act of 1950. Not only this but the decision between the parties in C.O. Suit No.832/73 is final and binding, wherein it has already been declared that the rent deposited by the tenant is not valid and legal payment of the rent to the landlord, therefore, the defendant-tenant cannot dispute the finding recorded in C.O. Suit No.832/73 and, therefore, the first appellate court committed error of law in holding the payment of rent by the tenant beyond 31.10.1975 in C.O. Suit No.832/73 as valid and legal payment.

The learned counsel for the appellant also submits that complete procedure has been given how the rent can be deposited by the tenant in the court under Section 19A of the Act of 1950. Hon'ble the Apex Court in the case of Kuldeep Singh vs. Ganpat Lal and another (AIR 1996 SC 729) arising under the Rajasthan's Rent Act of 1950 itself, held that the benefit under Section 19A(4) is available to the tenant only when conditions laid down in the said provisions are satisfied. According to the learned counsel for the appellant, therefore, the payment which has not been made under Section 19A by the tenant, cannot be a valid payment of rent to the landlord or tender of rent to the landlord so as to allow the tenant to take benefit of his having paid the rent. Hon'ble the Apex Court in the case of Kuldeep Singh's case (supra) also held that benefit of legal fiction can be given for the limited purpose for which

the fiction was created and this fiction should not be extended, therefore, the deposit of rent by the tenant in the earlier C.O. Suit No.832/73 cannot be treated to be valid under Section 19A or any other provision of the Act of 1950.

Supporting the judgment of the first appellate court, the learned counsel for the respondent submitted that the rent was determined on 31.10.1975 in the earlier filed C.O. Suit No.832/73 but said order was modified on 18.12.1975 and thereafter the tenant was allowed to deposit the rent by 23.12.1975, therefore, it is not correct to say that the rent was in fact determined on 31.10.1975 by the trial court. It is also submitted that the tenant could have deposited the rent in the earlier filed C.O. Suit No.832/73 itself because that was the suit for recovery of arrears of rent filed by the plaintiff against the tenant and in relief clause, the plaintiff himself claimed decree for future rent also and not the decree for rent upto 31.10.1975 only or for the period less than the life of the suit. It is true that the plaintiff claimed that the suit for future rent be decreed upto the period of eviction of the tenant but the trial court had no jurisdiction to pass the decree of eviction as there was legal bar created by law on defendant's compliance with the provisions under Section 13A of the Act of 1950, therefore, the trial court could have and should have decreed the suit for the rent upto the date of decision of the suit even if the trial court was bound to dismiss the suit

for eviction on the ground of default after declaring that the defendant has not committed the default in view of compliance by the defendant of Section 13A of the Act of 1950. It is also submitted that it cannot be said that the suit for recovery of arrears of rent was not pending upto the date when the C.O. Suit No.832/73 of the plaintiff was decided by the trial court by by judgment and decree dated 27.7.1976. The suit for recovery of rent for future period was pending even after payment of rent by the defendant tenant and, therefore, the payment of rent was by the tenant in the C.O. No.832/1973 was against the plaintiff's claim for the rent.

The learned counsel for the respondent also submitted that in the case of Govind Ram vs. Smt. Raji Bai (1977 RLW 368), when the rent was deposited under Section 19A even during pendency of the suit for eviction on the ground of default and where the rent was determined under Section 13(3) which should have been deposited under Section 13 (4) of the Act of 1950, still the said rent was taken as the payment of the rent under Section13(4) of the Act of 1950 and the tenant was not declared defaulter in payment of rent, therefore, according to the leaned counsel for the respondents, the tenant in this case, who has deposited the rent in a suit filed by the plaintiff himself for recovery of arrears of rent, cannot say that the rent which was deposited by the tenant in the said suit was not valid tender/offer of rent to the

landlord. It is also submitted that the tenant-defendant not only parted with the rent amount but it was in the reach of the plaintiff in the light of the decision of C.O. Suit No.832/73, therefore, also that can be said to be amount in the hands of the plaintiff-landlord.

The learned counsel for the respondent also relied upon the judgment delivered in the case of Moti Lal v. Prahalad Rai & anr. (RLW 1991(2) 338) wherein also in identical circumstances, the rent was deposited under Section 13A by the tenant in the earlier filed suit, beyond the period of determination of the rent by the trial court, was accepted as valid payment of rent. In addition to above, the learned counsel for the respondent submits that when civil court itself allowed the deposit of rent in the suit filed by the plaintiff himself then even if there was mistake on the part of the defendant in depositing the rent then that mistake is only a mistake of procedure and also coupled with the mistake by the court in allowing the deposit of rent beyond the period of 31.10.1973. For this, the respondent cannot be punished. The learned counsel for the respondent relied upon the judgment of the Hon'ble Apex Court delivered in the case of Mohammed Gazi vs. State of M.P. & ors. (2000 WLC (SC) Civil 330). The learned counsel for the respondent also relied upon judgment of the Hon'ble Apex Court delivered in the case of S.B. Noronah vs. Prem Kumari Khanna (1979(2) All India Rent Control Journal 375) wherein Hon'ble the Apex Court held

that common sense should not be kept in cold storage when pleadings are construed and the parties win or lose on substantial questions not technical tortures and the courts cannot be abettors. According to the learned counsel for the respondent, in the facts of this case if the tenant is declared defaulter in payment of rent then it will cause great hardship to the tenant who already deposited the rent with the leave of the court in the court and the court passed the order that the landlord may withdraw the amount. Such interpretation would be against the spirit of the Rent Control Act enacted to give benefit to the tenant and to protect the tenant from eviction otherwise than as provided under the Act of 1950.

I considered the submissions of the learned counsel for the parties and perused the record also.

The facts of the case have already been narrated in detail, therefore, there is no need to mention the facts again here. The question is only whether deposit of rent by the tenant in earlier suit no.832/1973 filed by the landlord-appellant can be accepted as valid payment of rent to the landlord. The thrust of argument of the learned counsel for the appellant is only that the tenant was required to strictly follow the procedure provided under the Rent Act of the State (Act of 1950) if he wanted to take benefit under the State Rent Act. If the rent is not deposited strictly in accordance with the provisions of the State

Rent Act, the benefit cannot be claimed by the tenant against his eviction on the ground of default in payment of rent. According to the learned counsel for the appellant, the facts of this case are almost similar to the facts of the case of Atma Ram vs. Shakuntala Rani (1005(2) RCJ 10 (SC)), wherein Hon'ble the Apex Court considered several judgments of the Hon'ble Apex Court and thereafter declared that " ..... if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirement of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision."

It will be worthwhile to look into the facts of the case of Atma Ram's case (supra). In that case, there was dispute with regard to payment of rent of the period till January, 1991. According to the tenant, he remitted the rent time to time to the landlord but he did not accept the rent. Since the rent sent by money order was not accepted by the landlord, therefore, the tenant who was liable to pay the interest over the arrears of rent and was entitled to take benefit under the Punjab Indebtedness Act, 1934, therefore, the tenant instead of depositing the rent under the Punjab Rent Act, deposited the rent by initiating proceedings under the said Punjab Indebtedness Act, 1934. The court in the proceedings under the Punjab Indebtedness Act, 1934,

disposed of the tenant's petition by order dated 12.2.1995 and allowed the tenant to withdraw the amount deposited by him of the rent for the premises for payment to the landlord. Thereafter, the landlord called upon the tenant to pay the arrears of rent by issuing notice dated 16.5.1996 and in response to that notice, the tenant expressed his willingness to pay the arrears of rent but sent the cheque for a sum of Rs.952/- only which was the rent for the period from February,1995 to June, 1996. While doing so, the tenant excluded the rent for the period February 1, 1992 to January 31, 1995, which the tenant deposited under the Punjab Indebtedness Act, 1934. Thereafter, on 1.1.1998, the landlord filed the application for eviction of the tenant from the premises in question under Section 14(1)(a) of Punjab State Rent Control Act. In the facts and circumstances of the case, the Hon'ble Apex Court after distinguishing the earlier judgment of the Hon'ble Supreme Court delivered in the case of Mangal Rai and another vs. Kidar Nath and others (1980) 4 SCC 276) and after considering the case of Shri Vidhya Prachar Trust vs. Pandit Basant Ram ((1969) 1 SCC 835), held that even when application under Section 31 of the Punjab Indebtedness Act, 1934 was submitted in the same court, which was also functioning as Rent Controller, still the amount of rent deposited under Section 31 of the Punjab Indebtedness Act, 1934 cannot be considered valid payment of rent to the landlord under the Rent Act. Hon'ble the Apex Court held

that in various judgments of the Supreme Court including the judgment delivered in the case of Kuldeep Singh(supra) (relied upon by the learned counsel for the appellant), a tenant is required to follow the procedure of deposit of rent as provided under the Rent Act itself and any deposit of rent in any other proceedings, cannot be treated as valid deposit of rent by the tenant and, therefore, the tenant is not entitled to any benefit.

There cannot be any quarrel about the law laid down by Hon'ble the Apex Court and in view of the said judgment of Atma Ram's case, the tenant can take benefit of the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 only when he complies with the provisions of the said Act of 1950. But facts of this case clearly reveal that plaintiff's earlier suit No.832/73 for eviction of the tenant was filed in civil court and not in special court or tribunal established for deciding the rent cases between the landlord and the tenant. In Rajasthan, the suit for eviction of the tenant is filed under General Law and the Rajasthan Premises(Control of Rent and Eviction) Act, 1950 only puts certain restrictions against the tenant's eviction and enhancement of rent. Therefore, the composite suit for relief of eviction of tenant on accrual of cause of action under Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 with the other reliefs is maintainable in civil court. The plaintiff in present suit, sought decree

of eviction of tenant on the ground of default and also sought decree for future rent upto the period till the tenant hands over vacant possession of the suit property to the landlord on passing decree for eviction of the tenant by the civil court. It was the choice of the landlord to seek decree for eviction on the ground of default under clause (a) of sub-section (1) of Section 13 of the Act of 1950.The plaintiff also could have sought mere relief of arrears of rent under General Civil Law. The court could have granted the decree for mere arrears of rent after dismissal of the suit for eviction on the ground of default. In the Rajasthan, suits against the tenant are not filed under the provisions of the Rent Act of the State but filed in civil court under General Civil Law and are regulated by the procedure as provided under the Code of Civil Procedure and the decree passed by the civil court even in the matter of dispute between the landlord and the tenant, is appealable under Section 96, C.P.C. and further appealable under Section 100,C.P.C. The separate provision has been made for passing certain order under the State Rent Act in Rajasthan also and for which separate limitation has been prescribed for preferring appeal and those orders are passed under the State Rent Act and appeal lies under the State Rent Act. We are concerned with the litigation in which the order has not been passed under the Rent Control Act but the civil Court has decided the suit under General Law. Whereas in the case of Atma Ram(supra), there

were two separate authorities (court, though was one and the same but had two jurisdictions; one having jurisdiction under the Rent Control Act of the State and another, under the local law and i.e., Punjab Indebtedness Act, 1934). The rent disputes were triable before the Rent Controller where the subject matter can be limited. The same court had another limited jurisdiction to give relief to debtors in certain circumstances. Therefore, the same court had no jurisdiction to decide the issues involved in two petition so as to record any finding about the right of parties under another act and proceedings. Such is not the position in the case in hand, therefore, the judgment of Atma Ram's case(supra) cannot be applied to the facts of this case.

Otherwise also, even if it is held that the tenant should have followed the procedure as provided under Section 19A of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, for deposit of rent in court, even then in the facts of this case, the tenant could not have been expected to deposit the rent under Section 19A of the Act of 1950 because of the simple reason that plaintiff's own suit No.832/73 for recovery of rent against the tenant was pending and the defendant-tenant deposited the rent in the proceedings(suit) which were(was) proceedings under the General Civil Law having application of the State Rent Act. In this case, the tenant has not deposited the rent in any other proceeding, proceedings other than initiated where the Rent

Control Act had no application. Therefore also, Atma Ram's case has no application to the facts of this case.

Since the plaintiff himself claimed decree for future rent in the said suit No.832/73, the trial court under the General Law, after dismissal of the suit for eviction of the tenant on the ground of default on compliance by the tenant of Section 13A of the Act of 1950, could have decreed the rent upto the period of decree of the suit but has not decreed the suit and has not given adjustment of the rent deposited by the tenant beyond the period for which the court determined the rent under Section 13A(b) and the plaintiff did not challenge the dismissal of the suit by the trial court for further rent, it cannot be said that the rent deposited by the tenant beyond the period for which rent was determined by the court under Section 13A(b) of the Act of 1950 was deposited in a suit not having application of the Act of 1950.

Section 13A of the Act of 1950 only provides that on deposit of the rent by the tenant under sub-section (b) of Section 13A of the Act of 1950, the court shall dispose of the proceedings “as if the tenant had not committed any default”. Meaning thereby, *the court could not have passed the decree for eviction of the tenant* on the ground of default. It is nowhere provided that the entire suit for all other reliefs shall also be dismissed by the trial court on depositing the rent by the tenant under sub-section (b) of Section 13A of the Act of 1950. The plaintiff in fact

prayed for the decree for the future rent also in the same suit No. C.O. 832/1973 but if he did not insist for the decree for future rent, it was his choice. On refusal of the trial court for decree for future rent, the plaintiff could have preferred appeal for recovery of rent for the period during the pendency of the suit. In such situation, the dismissal of suit by the trial court, the defendant tenant could not have preferred appeal against finding recorded by the trial court, rather say observation of court in suit No.832/73 about the validity of deposit of rent by the tenant in the suit No.832/72, for the period upto which suit for recovery of rent remained pending. Therefore, the said finding of the trial court in civil suit No.832/73 is not binding against the defendant-tenant and he can certainly submit that the finding recorded by the trial court in Civil Original Suit No.832/73 is illegal and wholly without jurisdiction. The learned counsel for the appellant tried to justify the said finding of the trial court in Civil Original Suit No.832/73 on the ground that said finding cannot be challenged by the defendant-tenant in present suit but it became difficult for the learned counsel for the appellant to support his said plea by any law.

If we go by strict language of sub-section (b) of Section 13A of the Act of 1950, then the trial court had only jurisdiction to “dispose of the proceedings” on deposit of the rent by the tenant under sub-section (b) of Section 13A of the Act of 1950 and the trial court had no

jurisdiction to determine any issue between the parties. In that situation also, the court had no jurisdiction to determine the legality and validity of the payment of rent subsequent to the period for which the rent was determined by the trial court under Section 13A(b) of the Act of 1950 and then the finding about the legality and validity of the deposit of the rent by the tenant beyond the period of determination of rent in Civil Suit No.832/73 becomes wholly without jurisdiction.

Be it as it may be, the plaintiff was given right to withdraw the rent of the period beyond the period for which the rent was determined by the trial court in Civil Original Suit No.832/73 despite the fact that the court declared that the payment of rent is not legal and valid. The rent was determined in a proceeding instituted where the provisions of the Act of 1950 were applicable, therefore, it cannot be said that the defendant had deposited the rent in the proceedings which were not under the Act of 1950 or where the provisions of the Act of 1950 were not applicable. And further more the defendant, to pay the rent to the landlord, parted with the rent amount in fact and it was in reach of the landlord, therefore, also the tenant cannot be declared defaulter in payment of rent.

In view of the above, it is held that the payment of rent by the tenant in Civil Original Suit NO.832/73 beyond the period of determination of rent by the trial court was valid payment of rent by

the tenant to the landlord and the payment was under the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950.

In view of the above discussion, the first appellate court was right in allowing the appeal of the tenant-respondent and rightly dismissed the suit of the plaintiff. Consequently, the appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

mlt.